

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re J.B., a Person Coming Under the Juvenile
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.B.,

Defendant and Appellant.

F057520

(Super. Ct. No. 07CEJ601321-2)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. David C.
Kalemkarian, Judge.

Candice L. Christensen, under appointment by the Court of Appeal, for Defendant
and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna
and Sarah J. Jacobs, Deputy Attorneys General, for Plaintiff and Respondent .

-ooOoo-

* Before Vartabedian, A.P.J., Levy, J., and Gomes, J.

Appellant J.B., a minor, was initially adjudged a ward of the court pursuant to Welfare and Institutions Code section 602¹ on May 19, 2008, following his admission of an allegation that he committed misdemeanor vandalism (Pen. Code, § 594, subd. (a)). In the instant case, on March 23, 2009, he admitted an allegation that he committed a violation of Penal Code section 148, subdivision (a)(1) (resisting, delaying or obstructing a peace officer), a misdemeanor. That same date, the juvenile court continued appellant as a ward of the court; continued him under the supervision of the probation officer; placed him on the electronic monitoring program; released him to the custody of his parents; and declared his maximum term of physical confinement (MTPC) to be one year eight months, based on the instant offense and the offense adjudicated in appellant's first wardship proceeding.

On appeal, appellant contends the juvenile court erred in declaring, and therefore this court should strike, the MTPC. The People concede the point. We will strike the MTPC and otherwise affirm.

DISCUSSION

Section 726 deals with “the maximum term of confinement in juvenile wardship cases generally.” (*In re Sean W.* (2005) 127 Cal.App.4th 1177, 1187.) Subdivision (c) of section 726 (section 726(c)) “requires the juvenile court to specify that the minor may not be confined for a period in excess of the maximum term of imprisonment which could be imposed on an adult convicted of the offense that brought the minor under the jurisdiction of the juvenile court. By its express terms, however, section 726(c) applies only “[i]f the minor is removed from the physical custody of his or her parent or guardian” (*In re Ali A.* (2006) 139 Cal.App.4th 569, 573.) Where, as here, a minor is not removed from

¹ Except as otherwise indicated, all statutory references are to the Welfare and Institutions Code.

the physical custody of his parents or guardian, section 726(c) “does not apply[,] ... the juvenile court [is] not required by [section 726(c)] to include a maximum term of confinement in its dispositional order” (*ibid.*), and the setting of an MTPC “is of no legal effect” (*id.* at p. 574). Accordingly, as the parties agree, the juvenile court erred when it set an MTPC of one year eight months for appellant. (*Ibid.*, *In re Matthew A.* (2008) 165 Cal.App.4th 537, 541.)

Appellant contends the error requires the striking of the MTPC. The People, although they assert that striking the MTPC “is not strictly necessary because [the MTPC] has no legal effect, and is not likely to prejudice appellant,” do not object to this court doing so. Assuming for the sake of argument the truth of the People’s assertion, we nonetheless believe appellant is entitled to a dispositional order free of potentially confusing legally ineffective directives, and that the practice of improperly declaring an MTPC should be discouraged. (*In re Matthew A.*, *supra*, 165 Cal.App.4th at p. 541.) Therefore, we will strike the MTPC. (*Ibid.*)

DISPOSITION

The maximum period of physical confinement of one year eight months declared by the court is stricken. As modified, the judgment is affirmed.